

E859chr1

Trial

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x  
UNITED STATES OF AMERICA

3 v. 12 CR 626 (ER)

4 RAYMOND CHRISTIAN a/k/a

"Reckless"

5 GLENN THOMAS, a/k/a "Gucci"

TYRELL WHITAKER, a/k/a "Bow Wow"

Defendants

6 -----x

New York, N.Y.

August 5, 2014

9:17 a.m.

9 Before:

HON. EDGARDO RAMOS

District Judge

11 APPEARANCES

12 PREET BHARARA

United States Attorney for the

13 Southern District of New York

ANDREW BAUER

14 KAN M. NAWADAY

Assistant United States Attorney

15 DAVID S. GREENFIELD

16 and

ANTHONY STRAZZA

17 Attorneys for Defendant Christian

18 LAW OFFICES OF DON BUCHWALD

Attorney for Defendant Thomas

19 DON D. BUCHWALD

20 KELLEY DRYE & WARREN LLP

Attorney for Defendant Thomas

21 LEVI DOWNING

22 GEORGE ROBERT GOLTZER

and

23 YING STAFFORD

Attorneys for Defendant Whitaker

24 -- also present--

S.A. Andrei Petron - FBI

E859chr1

Trial

1 (In open court; jury not present)

2 (Case called)

3 (Defendants present)

4 MR. BAUER: Your Honor, I guess while we're waiting  
5 for the jury there's one, I think, a minor issue -- we might as  
6 well front it now -- which was the photograph of Glenn Thomas  
7 the one that your chambers was copied on, an e-mail copied on.  
8 Mr. Buchwald had objected to what I'll propose Government  
9 Exhibit 202 is. I'm holding it up here. It's a picture of  
10 Mr. Thomas.

11 THE COURT: The surly picture?

12 MR. BAUER: He also objects to the fact he's wearing  
13 darker clothing, which is alleged to have been worn during the  
14 night of the murder.

15 We endeavored to accommodate his concerns. I found  
16 the other picture that we had of Mr. Thomas, which is this one.  
17 If you're straining to see it, because it's really hard to see,  
18 he is wearing white clothing but it's difficult to see. For us  
19 it's not about the surliness. It's not about the clothing.  
20 It's about the ability of the jury to see the picture. So I  
21 think Mr. Buchwald objects to this. But rather than do it in  
22 front of the jury we plan on using this picture, the more  
23 surly, dark-colored, darker clothing, picture.

24 MR. BUCHWALD: I do object, your Honor.

25 This photo to is simply for the purposes of their

E859chr1

Trial

1 charts in the sky when they put up all the names.

2 THE COURT: Yes.

3 MR. BUCHWALD: That's the only purpose of it. And  
4 given that that's the only purpose of it -- there is no  
5 question both of these portray Mr. Thomas. There's no reason  
6 to be using the one that has dark clothing which is what is  
7 described by witnesses was being worn on December 15 of 2010.

8 THE COURT: So Mr. Bauer, there will be no testimony  
9 from any government witness indicating that they were shown an  
10 array that included the surly picture and that they picked that  
11 particular picture as depicting Mr. Thomas?

12 MR. BAUER: Well, your Honor, we took these  
13 photographs from our binders of photographs that we did show to  
14 witnesses. I don't remember which witness saw which one of  
15 those but I think --

16 MR. BUCHWALD: The one we inquired about, we said  
17 where is the photo of the array, that was shown to Daniella  
18 Williams, who is going to be one of their witnesses. And  
19 Mr. Bauer found it and e-mailed it to us. And it includes the  
20 light colored -- the one where --

21 THE COURT: Can I see that?

22 Ms. Miller, can you get that second picture.

23 Is there going to be any dispute, Mr. Buchwald, that  
24 this is Mr. Thomas?

25 MR. BUCHWALD: No. With respect to either one, there

E859chr1

Trial

1 won't be a dispute that's Mr. Thomas.

2 The question is which one is going to be sitting up on  
3 the board, which serves no purpose other than as a  
4 demonstrative aid to remember who is who.

5 THE COURT: I don't think that the picture -- the less  
6 surly picture is so obscure that you can't tell that it's  
7 Mr. Thomas. And there being no assertion by the government  
8 that this particular photo, the surly photo was the one that  
9 was actually picked by a potential witness in this case, I  
10 don't think that the government will be prejudiced by using the  
11 photograph in which Mr. Thomas is wearing light-colored  
12 clothing. So if there is no dispute otherwise that's the one  
13 that will be used.

14 MR. BUCHWALD: Thank you.

15 THE COURT: I propose to open up the doors and let the  
16 jury in. So let's do that. Unless there's anything else.

17 (Jury selection follows)

18 (A jury of twelve and four alternates was impaneled  
19 and sworn)

20 THE COURT: Everyone, please be seated.

21 Ladies and gentlemen, I'm going to give you some  
22 initial instructions now and then we'll begin with opening  
23 arguments.

24 You are now a jury. And there is no higher function  
25 in our legal system. From now on whenever you enter or leave

E859chr1

1 the courtroom as a jury the parties and the audience will rise  
2 the same as they do for me because you are every bit as  
3 powerful and important as any judge.

4 Let me introduce or reintroduce you to some of the  
5 people who are here in the courtroom. As I told you before, my  
6 name is Judge Edgardo Ramos.

7 You've already met the defendants and their attorneys,  
8 Anthony Strazza, David Greenfield, Don Buchwald, Joshua Dratel,  
9 Levi Downing, Ying Stafford, and George Goltzer; and the  
10 prosecution team, Assistant United States Attorneys Andrew  
11 Bauer and Kan Nawaday, who will be assisted by Special Agent  
12 Andrei Petron of the FBI and Lia McInerney, a paralegal with  
13 the U.S. Attorney's Office.

14 My courtroom deputy is actually Ms. Jasmine Rivera.  
15 She's not here. She'll be joining us later this week.  
16 However, you will be dealing for the most part over the next  
17 few days with Ms. Miller. So if you have any questions or  
18 difficulties she's the person to consult. Ms. Miller is also  
19 my law clerk and her job is to help me to research any legal  
20 issues that may come up from time to time during the trial.

21 We have a court reporter here. We will have two  
22 throughout the course of the trial and you'll see them tag  
23 teaming in and out throughout the course of the day. Their job  
24 is to take down everything that's said throughout the trial so  
25 there's a verbatim record of what happened.

E859chr1

1           Now, with respect to the role of the jury. In the  
2 American system of justice the judge and the jury have separate  
3 roles. My job is to instruct you as to the law that governs  
4 the case. I will give you some instructions now and others  
5 from time to time during the trial. At the end of the trial, I  
6 will give you detailed instructions about the law you will need  
7 to apply when you deliberate. Your job as jurors is to  
8 determine the facts based on the evidence presented at trial.  
9 You are the only triers of fact and your decisions on the  
10 factual issues will determine the outcome of this case. You  
11 must not take anything I may say or do during the trial as  
12 indicating what my opinion is or what your verdict should be.  
13 It's not my job to have such an opinion and if I did it  
14 shouldn't influence you in any way.

15           Now you must pay close attention to all of the  
16 evidence presented. Evidence consists of the testimony of the  
17 witnesses, exhibits that are admitted as evidence, and  
18 stipulations agreed to by the attorneys.

19           A stipulation is simply an agreement between the  
20 lawyers about facts or testimony.

21           Certain things are not evidence in the case and you  
22 must not consider them as evidence. For example, statements  
23 and arguments by the lawyers are not evidence. They are simply  
24 arguments in which they will tell you what they think the  
25 evidence proves and how they think you should analyze the

E859chr1

1 evidence.

2 My statements are not evidence either.

3 Questions by the lawyers are not evidence. Only the  
4 answers given by the witness are evidence. For example, if a  
5 witness is asked: It was raining that day, wasn't it? And the  
6 witness says: No, it wasn't. Then, based on that question and  
7 answer, there is no evidence in the case that it was raining  
8 that day no matter how convinced the lawyer sounded when he or  
9 she was asking the question.

10 Objections to questions are not evidence. The lawyers  
11 are obligated to make an objection when they believe evidence  
12 being offered is improper under the rules of evidence. You  
13 should not be influenced by the objection or by the court's  
14 ruling on it.

15 Any testimony that I exclude or strike or tell you to  
16 disregard is also not evidence and you must not consider it.  
17 If I instruct you that some evidence is only to be considered  
18 for a certain purpose, you must follow that instruction.

19 And, of course, anything you may see or hear outside  
20 the courtroom is not evidence and should be disregarded by you.  
21 You are to decide the case only on the evidence presented here  
22 in the courtroom.

23 In deciding the facts of the case, you will have to  
24 decide the credibility of witnesses; that is, how truthful and  
25 believable they are.

E859chr1

1           Now, how do you decide what to believe and what not to  
2 believe? You are going to listen to the witnesses, observe  
3 them, and then decide just as you would decide such questions  
4 in your everyday life. Did they know what they were talking  
5 about? Were they honest, open, and truthful? Did they have a  
6 reason to falsify or exaggerate their testimony? Is there any  
7 reason to think they might be mistaken about what they're  
8 telling you? How did their testimony square with the other  
9 evidence in the case?

10           Sometimes it's not what a witness says but how he or  
11 she says it that may give you a clue as to whether or not to  
12 accept that witness's version of an incident or an event as  
13 credible or believable. So, what the witness says, the way the  
14 witness says it, and the rest of the evidence in the case will  
15 play important roles in your reaching a judgment as to whether  
16 or not you can accept the witness's testimony as reliable.

17           As the trial proceeds, you may have impressions of a  
18 witness or a subject but you must not allow these impressions  
19 to become fixed or hardened because if you do, in a sense, you  
20 foreclose consideration of the testimony of other witnesses or  
21 other evidence that may be presented after the witness you  
22 heard. This would be unfair to one side or the other. A case  
23 can be presented only step by step, witness by witness, until  
24 all of the evidence is before you. So, please remember that  
25 there may be more -- that there may be another side to any



E859chr1

1 witness's story and there may be more to come on any given  
2 issue. I cannot emphasize too strongly that you must keep an  
3 open mind until the trial is over. You should not reach any  
4 conclusions until you have all of the evidence before you.

5 Now, in order to ensure that you decide the case only  
6 on the evidence and that you not be influenced in any way by  
7 anything that might occur outside the courtroom, I must give  
8 you a specific set of instructions.

9 First, do not discuss this case with anybody while the  
10 case is going on. That includes even friends or members of  
11 your own family. You may tell your friends and family that  
12 you're a juror in a case and that it is expected to last three  
13 weeks or so. But don't tell them anything else about the case  
14 until after you've been discharged. Not discussing the case  
15 includes blogging, twittering, tweeting, MySpace, Facebook,  
16 LinkedIn, and the like.

17 My instructions to you not to discuss the case also  
18 includes not discussing it even amongst yourselves while the  
19 trial is going on. You will have the opportunity and indeed  
20 the duty to discuss the case amongst yourselves later on. But  
21 that can happen only after all of the evidence is in and the  
22 case is given to you to discuss and decide in the jury room.  
23 Not talking to each other about the case includes not texting,  
24 e-mailing, creating a Facebook group, or doing anything along  
25 those lines.

E859chr1

1           Next, you are not to read anything in the newspapers  
2 or anywhere about this case should that occur.

3           Also, you are not to listen to or view any reporting  
4 about this case if it should be broadcast on TV, over the  
5 radio, or the internet.

6           Now, I know that many of you use cellphones,  
7 BlackBerries, the internet and other tools of technology. You  
8 also must not talk to anyone about this case or use those tools  
9 to communicate electronically with anyone about the case.  
10 Again, this includes your family and friends. You may not  
11 communicate with anyone about the case on your cellphone,  
12 through e-mail, BlackBerry, iPhone, text messaging or on  
13 Twitter, through any blog or website, through any internet  
14 chatroom or by way of any other social networking websites  
15 including Facebook, MySpace, LinkedIn and YouTube.

16           Next, you are not to read anything in the newspapers,  
17 on the internet, your cellphones or anywhere else about this  
18 case. And you are not to listen to or view any reporting about  
19 this case if it should be broadcast on TV, over the radio or on  
20 the internet.

21           Next, don't do any research or any investigation about  
22 the case on your own. Do not go to visit any place you may  
23 hear described during the trial. Don't do any research on the  
24 internet or in the library or any other reference source.  
25 Don't Google anyone.

E859chr1

1           Next, be sure that I am informed of any person that  
2           you recognize comes into the courtroom. This is a public trial  
3           so it could happen. But it is important that you not hear from  
4           them what may have happened in the court while the jury was not  
5           present. If you should see a friend, relative or acquaintance  
6           come into the court please send a note to me through Ms. Miller  
7           or Ms. Rivera at your first opportunity.

8           Next, you are not to allow anyone to speak to you  
9           about this case. If you are approached by anyone to speak  
10          about it, politely tell them that the judge has directed you  
11          not to do so. If any person approaches you or seeks to contact  
12          you about the case, you are required to report the incident  
13          promptly to me and you can do that by telling Ms. Miller or  
14          Ms. Rivera.

15          The lawyers, the parties, and the witnesses are not  
16          supposed to talk to the jury outside of the courtroom. Even to  
17          offer a friendly greeting. So if you happen to see any of them  
18          outside the courtroom, they will and they should ignore you.  
19          Please take no offense to this. They will only be acting  
20          properly by doing so. Indeed, they will be following my  
21          express directions to do so. Experience has shown that even  
22          innocent conversations with jurors can sometimes be  
23          misinterpreted so courts have a hard-and-fast rule that the  
24          lawyers and the parties cannot speak to jurors, period.

25          In addition, if anything should happen involving any

E859chr1

1 of you that is of -- if anything should happen involving any of  
2 you that is of an unusual nature or which you think is  
3 something the court should know, do not discuss it with any  
4 other juror. Simply give the clerk a note to that effect, to  
5 the fact that you want to speak with me about it, and I can  
6 then hear what it is you have to say. Of course, I do not  
7 expect that anything unusual will happen.

8 Finally let me say a few words about trial procedure.  
9 The trial has five parts.

10 First, each side will have the opportunity to make  
11 opening statements to you, and they will do that shortly. As  
12 I've told you already, these statements are not evidence.  
13 Their purpose is to give you an idea in advance of the evidence  
14 that the lawyers expect to hear -- expect you to hear from the  
15 witnesses. These statements allow the lawyers to give you a  
16 preview of what this case is about but the only evidence comes  
17 from the witnesses, exhibits, and stipulations.

18 The government has the burden of proof so it will go  
19 first. The defendants have no burden of proof and do not have  
20 to do anything at this trial. So the defendants do not have to  
21 give an opening statement. But if they choose to, the  
22 defendants' lawyers will go next.

23 Second, after the opening statements you will hear the  
24 testimony of the witnesses. Now this will be the longest part  
25 of the trial. The government's witnesses go first. Each

E859chr1

1 witness will first give direct testimony and then he or she may  
2 be cross-examined by the other side. Again, the defendants do  
3 not have to question witnesses but may choose to do so.  
4 Documents or physical objects or stipulations will be received  
5 in evidence during this time as well.

6           Following the government's case, the defendants may,  
7 but need not, present witnesses and other evidence. If they do  
8 call witnesses, those witnesses will be examined and  
9 cross-examined just as the government's witnesses were. If the  
10 defendants choose to present evidence, it is possible that the  
11 government would then present some rebuttal to that evidence.

12           Third, after all of the evidence has been received,  
13 each side will have an opportunity to make closing arguments.  
14 They will review the evidence and make arguments to you as to  
15 what conclusions they think you should or should not draw from  
16 the evidence. These arguments also are not themselves evidence  
17 but they may be helpful to you in summarizing the case before  
18 your deliberations.

19           Fourth, after these arguments or summations, as they  
20 are called, I will give you detailed instructions as to the law  
21 that applies and controls in this case. And you must follow  
22 those instructions. Those instructions to the jury are  
23 sometimes referred to as the jury charge.

24           Fifth, and most importantly, after the jury charge,  
25 you will go to the jury room to deliberate and discuss the

E859chr1

1 evidence in order to decide the facts and render a verdict.

2 Now, a few housekeeping matters before we begin.

3 Ms. Miller will show you to the jury room. That's where you  
4 will report in the morning. She'll also give you her telephone  
5 number where you can reach her if there is an emergency.

6 Please also give her your home, work, and cellphone numbers  
7 just in case we have a last-minute schedule change or other  
8 problem.

9 Our trial day will begin promptly at 9:30. We'll have  
10 a lunch break around 12:45 each day, give or take. And we'll  
11 have two fifteen-minute breaks, one midmorning and one  
12 midafternoon. We will end at 5:00 each day. If you should  
13 need a break before a scheduled break, just raise your hand and  
14 we'll make every effort to accommodate you.

15 Be on time after the breaks and in the morning. If  
16 you're late you'll keep everyone else waiting. I will make  
17 sure my commitment to you is that the parties and my staff will  
18 be here on time every morning and after every break.

19 If you wish, you may take notes and Ms. Miller will  
20 provide you with pads and pens for that purpose but if you do  
21 take notes you must leave them in the jury room when you go  
22 home for the night. And, remember, any notes you take are for  
23 your own personal use to help you remember or focus on what's  
24 going on. But they're not to be relied on by anyone else.

25 It's also completely up to you whether you even want

E859chr1

1 to take any notes. Some people find that it helps them  
2 concentrate or remember. Other people find it distracting.  
3 It's your call entirely. If you don't take any notes you  
4 should rely on your independent recollection of the evidence.  
5 When you deliberate, however, you should discuss what the  
6 evidence was and not what one juror or another's notes do or do  
7 not say.

8 (Continued on next page)

E85nchr2

1 THE COURT: Now what we will do now is we will take a  
2 break. Ms. Miller will take you into the jury room and  
3 introduce you to it and take some information from you. The  
4 parties will prepare for their opening arguments.

5 So let's take a break and let's be back and make sure  
6 that you are in the jury room no later than 25 minutes after  
7 the hour.

8 (Jury not present)

9 THE COURT: Let's talk about timing. Everyone can be  
10 seated. We will be starting around 3:30. I anticipate that we  
11 will be able to get all the openings in. I am not going to  
12 require the government to put on any witness this afternoon,  
13 since I don't think we will have any time. We will have very  
14 little time at the end.

15 MR. BAUER: We do have one witness for whom it was a  
16 specific hardship to come here today, Elena Gardner. She is  
17 going to be a very quick witness.

18 THE COURT: If you have a witness you want to put on,  
19 I'm happy to do that.

20 MR. BAUER: We actually have four witnesses ready, but  
21 Ms. Gardner is the most important because it will be difficult  
22 for her to come tomorrow, so if there is any way we can call  
23 her as the first witness.

24 THE COURT: That will be fine. Any idea who long the  
25 openings will be, Mr. Bauer, Mr. Nawaday?



E85nchr2

1 MR. NAWADAY: Your Honor, my opening will be about 12  
2 minutes.

3 THE COURT: 12 minutes, OK.

4 Will there be three openings on this side?

5 MR. STRAZZA: Yes.

6 THE COURT: Who will be doing the openings.

7 MR. STRAZZA: I will be opening on behalf of  
8 Mr. Christian and my opening will be about 15 minutes.

9 THE COURT: OK.

10 MR. GOLTZER: I will be opening on behalf of  
11 Mr. Whitaker. It will be somewhat longer.

12 MR. BUCHWALD: I will be opening on behalf of  
13 Mr. Thomas. Depending on what they cover, it won't be so long.  
14 If they don't cover, it will be a little longer.

15 THE COURT: I don't like to put limits on openings or  
16 closings, but if you hear me banging my head against the  
17 microphone, you have gone a little too long. Very well. 25  
18 after.

19 (Recess)

20 THE COURT: Are the parties ready?

21 MR. NAWADAY: Yes, your Honor. Your Honor, I hope  
22 it's OK. I am going to use the small podium.

23 THE COURT: That's fine.

24 MR. NAWADAY: We are not allowed to move that.

25 THE COURT: I don't chain lawyers to the podium, but

E85nchr2

1 don't stray too far and don't make any sudden moves towards the  
2 jury.

3 MR. NAWADAY: I will not.

4 THE COURT: Or the judge, more importantly.

5 MR. DRATEL: I have seen that.

6 (Jury present)

7 THE COURT: Opening for the government will be  
8 Mr. Nawaday.

9 MR. NAWADAY: December 15, 2010, it is a little past  
10 midnight at 54 Chambers Street, a small rooming house in  
11 Newburgh, New York.

12 Suddenly several armed men rush into the first-floor  
13 apartment wearing masks and armed with guns. The robbers order  
14 the people inside to get on the floor. They point guns at  
15 their faces, and they start shouting: Give it up, give it up.  
16 This is a robbery.

17 But things go wrong for the robbers. One man fights  
18 back. He's able to wrestle a gun away from one of the robbers  
19 and get that robber's ski mask off.

20 Another man jumps up and stabs another robber with a  
21 knife, but then gets shot by a robber and crawls for cover.  
22 Mayhem ensues. The robbers try to rush out.

23 But when they get to the front door, they can't open  
24 it. Why not? Someone is on the other side trying to hold the  
25 door shut to trap the robbers while he calls 911.

E85nchr2

Opening - Mr. Nawaday

1           That man is Jeffrey Henry. Jeffrey Henry is holding  
2 the door closed while at the same time calling 911.

3           So what did the robbers do? They pull on the door  
4 and, when they are able to get it partially open, they take  
5 turns sticking their guns through the opening and open fire,  
6 shooting at Jeffrey Henry. Two of their shots hit Mr. Henry.  
7 The robbers are able to force their way through the door.

8           Jeffrey Henry is terribly wounded. He makes it about  
9 two blocks before he collapses and later dies. That is why we  
10 are here today. We are here today because those three men  
11 robbed Jeffrey Henry of his life that night.

12           These two men, Glenn Thomas and Tyrell Whitaker, they  
13 were shooters. They were two of the robbers who were shooting  
14 around that door at Mr. Henry. And that man there, Raymond  
15 Christian, he was a robber who planned the robbery. He was the  
16 robber who lost his gun and ski mask.

17           I am going to take a few minutes this afternoon to  
18 explain the events that led to the robbery, and I am going to  
19 explain how the government is going to prove its case.

20           You will learn that Raymond Christian was a drug  
21 dealer and a leader of the gang.

22           You will learn that a couple weeks before the robbery  
23 and murder of Jeffrey Henry, Raymond Christian wanted to find a  
24 stash house to rob of money and crack cocaine. The  
25 neighborhood where his gang hung out was full of stash houses,

E85nchr2

Opening - Mr. Nawaday

1 places where people could buy drugs, buy crack. Christian knew  
2 this because he was a drug dealer who sold crack.

3 Why did he want to find a stash house to rob? Because  
4 it would be an easy way and a quick way to get money and drugs  
5 to sell.

6 So what was the plan? Simple. Find a stash house and  
7 rob it.

8 You will learn that on the night of December 14  
9 Christian and a member of his gang, a man named Anthony Baynes,  
10 identified 54 Chambers Street as a stash house to rob. 54  
11 Chambers Street was a known drug spot in Newburgh.

12 Jeffrey Henry and the other men who were at 54  
13 chambers that night were drug dealers who sold crack and other  
14 drugs out of that building.

15 So what did Christian and Baynes do? They went to see  
16 a man named James Williams, a high-ranking member of another  
17 gang. Why? For help getting guns, and to recruit more  
18 robbers.

19 You will learn that Baynes and Christian met with  
20 Williams and he joined the plan. He made phone calls and got  
21 guns for the robbers. He also got more robbers to help with  
22 the robbery.

23 You will learn that more robbers came to Williams'  
24 house that night. Two of those additional robbers were those  
25 two, Glenn Thomas and Tyrell Whitaker.

E85nchr2

Opening - Mr. Nawaday

1           Once the crew was assembled, they made their way to 54  
2 Chambers Street, which was only a few blocks away. When they  
3 got there, it was a little past midnight. You heard earlier  
4 what happened next. Christian, Thomas and Whitaker went inside  
5 the building with the other robbers. They found men inside and  
6 began robbing them, looking for drugs and money. You will  
7 learn that it was Christian who wrestled with the victim and  
8 lost his gun and ski mask.

9           Anthony Baynes, he was the robber who got stabbed. As  
10 you heard earlier, you will learn that Whitaker and Thomas were  
11 two of the robbers who were shooting around the door at  
12 Mr. Henry. For their conduct, the defendants are charged with  
13 committing a variety of crimes, such as the armed robbery of 54  
14 Chambers Street, the use of firearms during the robbery and the  
15 murder of Jeffrey Henry.

16           So, how will the government prove its case to you?

17           First, you will hear from police officers, the  
18 officers who found Mr. Henry's body and processed the evidence  
19 at the crime scene.

20           You will also hear that Christian and Thomas and  
21 Whitaker were drug dealers who carried guns.

22           You will also hear from police officers who recovered  
23 guns and drugs from some of them before that night.

24           You will also hear the 911 call that Mr. Henry made  
25 while he was trying to stop the robbers. During that call, you

E85nchr2

Opening - Mr. Nawaday

1 will hear gunshots, and you will hear Mr. Henry cry out in a  
2 bone chilling scream. At the end of the call, right after he  
3 was shot and the robbers rushing out past him, you will hear a  
4 robber whisper, Check his pockets, right before Mr. Henry's  
5 phone goes dead.

6 You will also see photographs and see physical  
7 evidence that was recovered, like spent shell casings, the  
8 knife that the victim used to stab Anthony Baynes, and  
9 Christian's ski mask that was left at the scene.

10 In this case you will also hear from two expert  
11 witnesses. You will hear from the medical examiner who  
12 conducted the autopsy of Mr. Henry and concluded that he died  
13 from two gunshot wounds. You will hear from the DNA expert who  
14 will tell you that a blood stain was found on the inside cheek  
15 area of that ski mask recovered at the scene and that Raymond  
16 Christian's DNA was on that blood stain.

17 You will also see video recordings of the robbers  
18 heading towards Chambers Street before the robbery and then  
19 running back after the robbery.

20 You will hear from victims of the robbery. You will  
21 hear from the crack dealer who fought back and was able to  
22 wrestle Christian's gun away from him. You will also hear from  
23 the man who fought back and stabbed Anthony Baynes and then was  
24 shot by another robber.

25 You will hear from other eyewitnesses, like the woman

E85nchr2

Opening - Mr. Nawaday

1 who lived across the street. She will describe seeing the  
2 robbers rush into 54 Chambers Street and how she saw Jeffrey  
3 Henry trying to hold the door closed as the robbers pushed and  
4 pulled and shot through the opening of the door into Mr. Henry.  
5 She will describe some of the smoke from the gun and the  
6 gunshots that hit Mr. Henry.

7 Now, these witnesses won't be able to tell you who the  
8 robbers were because the robbers were wearing masks, but you  
9 will also hear from witnesses who can. You will hear from  
10 insiders of the robbery crew people who participated and helped  
11 carry out the robberies and murder of Jeffrey Henry. You will  
12 hear from the robber who was stabbed, Anthony Baynes, the man  
13 who was there with the defendants when the robbery was planned  
14 and carried out. Baynes will tell you in detail from his own  
15 personal experience as a participant and eyewitness to this  
16 crime everything he saw heard and did with those three men.

17 You will also hear from one of the men Williams call  
18 to get guns for the robbery, a man named Jamar Mallory.  
19 Mallory will tell you that Williams called him that night and  
20 told him he was sending two guys and to give them guns.

21 Who were the two people who showed up? Whitaker and  
22 Thomas. Mallory will also tell you that after the robbery  
23 Whitaker and Thomas returned the guns to him and told him what  
24 happened.

25 Now Baynes and Mallory are criminals just like the

E85nchr2

Opening - Mr. Nawaday

1 defendants.

2 Baynes is a robber and a drug dealer. You will hear  
3 that at the robbery at 54 Chambers Street was not the only  
4 robbery Baynes has been involved in. He's going to tell you  
5 about other robberies he's participated in. He's also going to  
6 tell you that when he was first questioned by detectives he  
7 didn't tell the full story of what happened. He made it sound  
8 like he wasn't part of the robbery, and he tried to protect his  
9 friends like Raymond Christian by not telling the police about  
10 everyone's involvement.

11 As for Mallory, he is a robber and a drug dealer, too.  
12 Both Baynes and Mallory will tell you about their crimes and  
13 how each of them was arrested, prosecuted, and pled guilty.

14 You will also hear from witnesses who have committed  
15 crimes before, but did not participate in this robbery and  
16 shooting.

17 For example, you will hear from a marijuana dealer in  
18 Newburgh, who will tell you that just minutes after the robbery  
19 Tyrell Whitaker came to his house with bloody clothes, and he  
20 gave Whitaker a garbage bag to put the bloody clothes in.

21 With all these witnesses you will learn that they all  
22 entered into agreements with the government to provide  
23 information and testimony in the hopes of getting less jail  
24 time for themselves.

25 As with any witness, the issue is not whether you like



E85nchr2

Opening - Mr. Nawaday

1 what you hear. It's whether you believe it. And the reality  
2 is, and your common sense will tell you this, only other  
3 criminals can tell you how a robbery murder like this one was  
4 planned and carried out.

5 So I urge you to listen carefully when they testify.  
6 Scrutinize what they tell you closely and consider whether what  
7 each of them tells you is consistent with the other testimony  
8 and evidence that you will hear in this case.

9 When you do that, you will find that it is consistent,  
10 that what each witness tells you matches the others, and that  
11 they are all corroborated by all the other evidence you will  
12 see and hear, like the testimony you will hear from the law  
13 enforcement witnesses, eyewitnesses and expert witnesses.

14 This is a serious case with serious charges. Like all  
15 criminal trials, it is an important trial for the government  
16 and for the defendants. So I am going to ask you to do three  
17 things:

18 First, pay close attention to the evidence, listen  
19 carefully to the witnesses;

20 Second, follow Judge Ramos' instructions on the law;  
21 and,

22 Third, rely on your common sense and life experience,  
23 your life experience you walked into this courtroom with this  
24 morning. Use your common sense to weigh the evidence and the  
25 credibility of the witnesses.

E85nchr2

Opening - Mr. Nawaday

1           If you do those three things, the government will get  
2   a fair trial, and the defendants will get a fair trial. And if  
3   you do those three things, you will reach the only verdict  
4   consistent with the evidence that the defendants are guilty.

5           THE COURT: Thank you, Mr. Nawaday.

6           Did Mr. Christian wish to make an opening statement?

7           MR. STRAZZA: Yes, your Honor.

8           THE COURT: Mr. Strazza.

9           MR. STRAZZA: Good afternoon, ladies and gentlemen.

10          JURORS: Good afternoon.

11          MR. STRAZZA: My name is Anthony Strazza. Along with  
12   my cocounsel David Greenfield, I represent Raymond Christian in  
13   this matter.

14          Raymond Christian had absolutely nothing to do with  
15   the robbery and the shooting that took place on December 15,  
16   2010. He wasn't there. He didn't plan it. He didn't agree  
17   with anybody to do it. He played no role in that incident  
18   whatsoever.

19          Now, let's be clear about something. You are going to  
20   hear a lot about Mr. Christian throughout the course of this  
21   trial. I'll tell you right now, he is a no angel.

22          Like many of the witnesses you will hear during the  
23   course of this trial that are going to sit in that chair,  
24   Raymond grew up in the ghetto on the streets of Newburgh, New  
25   York.

E85nchr2

Opening - Mr. Strazza

1 For those of you who are not familiar with the city of  
2 Newburgh, New York, you are going to learn that the  
3 neighborhood where Raymond and his family live is littered with  
4 drugs, violence, weapons, and crime.

5 Yes, you are going to hear that Raymond Christian has  
6 possessed guns in the past;

7 Yes, you are going to hear that Raymond Christian has  
8 sold drugs in the past;

9 Yes, you are going to hear that Raymond Christian was  
10 part of a group that was called Star Status on the street.

11 But none of that means that Raymond Christian is  
12 guilty of the crimes that he is on trial for here today. Just  
13 because the government is going to show you that Raymond  
14 Christian has committed crimes in the past, it doesn't mean  
15 they are going to be able to prove to you that he committed  
16 these crimes.

17 Throughout the course of this trial, you are going to  
18 be presented with different types of evidence. One of those  
19 types is going to come in the form of testimony from the  
20 witnesses that take the stand.

21 The second type will be presented to you in the form  
22 of exhibits. I like to refer to that as the tangible evidence,  
23 evidence you can see, hear and touch. It's going to be your  
24 job to evaluate all of that evidence. But when you do, please  
25 keep in mind that evidence, a piece of evidence is not the same

E85nchr2

Opening - Mr. Strazza

1 thing as a fact. Evidence is what gets presented to you. A  
2 fact is something you, and only you, can determine based upon  
3 your evaluation of that evidence.

4 With the tangible evidence, the physical items, the  
5 words, the sounds, the things depicted in those pieces of  
6 evidence are all pieces of evidence. But what those words  
7 actually mean, what those sounds mean, what's actually depicted  
8 is for you to determine.

9 So, for example, the government just told you that  
10 they are going to present to you evidence of recordings that  
11 show that my client Raymond Christian was present in the area  
12 of 54 Chambers Street the night that this incident occurred.

13 I want you to take a close look at these recordings.  
14 Look at the clarity of these recordings, and ask yourselves, is  
15 there any way possible, based upon looking at these recordings,  
16 that anybody could make any sort of identification just based  
17 on looking at these recordings?

18 You are also going to hear about the 911 call that was  
19 made from 54 Chambers Street during the robbery. Listen  
20 carefully to that recording. Yes, you will be able to hear  
21 gunshots; yes, you will be able to hear somebody screaming.

22 But the government also told you that you will be able  
23 to hear people talking and that based upon that talking you  
24 will be able to identify who those people are.

25 Hold them to that burden. Listen to that recording

E85nchr2

Opening - Mr. Strazza

1 for yourself and see if that's even remotely possible.

2 The point is that just because a piece of evidence is  
3 presented to you, it doesn't mean that that evidence proves the  
4 existence of the fact that the government is trying to prove.

5 The same is true for the DNA evidence that you just  
6 heard. The government's going to present you with this DNA  
7 evidence to try and prove that Raymond Christian was present  
8 inside of the apartment at 54 Chambers Street the night of the  
9 robbery.

10 Pay careful attention when you are hearing about this  
11 evidence. Listen carefully to who recovered this evidence,  
12 where it was recovered, what exactly was recovered, when it was  
13 recovered, how it was recovered.

14 Then listen carefully to what was done with this  
15 evidence after it was recovered. Who tested it? What kind of  
16 tests were done? When was it tested? Where was it tested?  
17 How was it tested?

18 You are going to learn that the mere presence of this  
19 DNA evidence on this mask cannot tell us anything about how the  
20 DNA actually got on the mask.

21 More importantly, you are going to learn that the mere  
22 presence of this DNA evidence on that mask cannot tell us  
23 anything about how that mask got into 54 chambers street.

24 Again, ladies and gentlemen, just because a piece of  
25 evidence is presented to you doesn't mean that that evidence

E85nchr2

Opening - Mr. Strazza

1 proves the fact that the government is trying to prove.

2 Let's talk about some of the testimonial evidence that  
3 you are going to hear throughout the course of this trial. You  
4 are going to hear from law enforcement witnesses. You are  
5 going to hear from actual people who were robbed at 54 Chambers  
6 Street, you are going to hear from witnesses who were outside  
7 of 54 Chambers Street when the robbery occurred, and some  
8 people who were in the area shortly after the robbery occurred.

9 Finally, you are going to hear from some of the actual  
10 participants in the robbery people who already pled guilty to  
11 this crime.

12 I expect that throughout the course of this trial you  
13 will hear from approximately 20 witnesses. Out of these 20  
14 witnesses, only one of them is going to sit in that chair and  
15 tell you that he saw Raymond Christian at 54 Chambers Street.  
16 That witness is Anthony Baynes.

17 It your job to listen to Mr. Baynes and determine  
18 whether or not you believe what he's saying is truthful and  
19 accurate. As you already heard, Anthony Baynes does not have  
20 such a good track record when it comes to being truthful and  
21 accurate when recounting what took place on the night of  
22 December 15, 2010.

23 You are going to learn that Anthony Baynes gave at  
24 least six or seven different stories about what he says  
25 happened. You are going to learn that the only reason Raymond

E85nchr2

Opening - Mr. Strazza

1 Christian is sitting here today is because of these stories.

2 Anthony Baynes was a participant in the robbery.

3 Anthony Baynes was stabbed and injured as a result of his  
4 participation. As a result of being injured, Anthony Baynes  
5 wound up in the hospital right next to some of the victims that  
6 he just robbed.

7 When the police arrived at the hospital and questioned  
8 Anthony Baynes, Anthony Baynes tried to come up with an  
9 innocent explanation for why or for how he got hurt.

10 As the police continued to press and press Anthony  
11 Baynes, Anthony Baynes started to change his story in an  
12 attempt to provide an innocent explanation for himself by  
13 giving the police information that he thought they had already  
14 obtained.

15 During the third or fourth version of his story,  
16 Anthony Baynes tried to come up with an innocent explanation  
17 for being at 54 Chambers Street that night. His explanation  
18 was that he was with an individual by the name of Laquavious  
19 Boykin, who you are going to learn is Raymond Christian's  
20 little brother. He told the police that he went to 54 Chambers  
21 Street that night because he thought Raymond might be there,  
22 and they wanted to see if Raymond was OK.

23 As the police continued to push, Anthony Baynes again  
24 changed his story in an attempt to come up with an innocent  
25 explanation for why he was now inside of 54 Chambers Street.

E85nchr2

Opening - Mr. Strazza

1 So this time he says he went there to check on Raymond, but  
2 when he got there, he was able to see inside of the apartment  
3 and he saw Raymond struggling with somebody. So he went in the  
4 apartment to help Raymond, and that's when he got stabbed.

5 Ladies and gentlemen, you are going to learn about all  
6 of the different stories that Anthony Baynes gave when he  
7 testifies. When you do, please listen carefully as he tries to  
8 weasel his way out of this crime by blaming other people for  
9 his actions.

10 In addition to his story changing numerous times, you  
11 are also going to learn that Anthony Baynes has entered into a  
12 contract with the Orange County district attorney's office. He  
13 has promised to help the government prosecute this case in the  
14 hope of getting out of jail.

15 You are going to learn that Anthony Baynes was  
16 indicted for murder, but as a result of his cooperation  
17 agreement, he was allowed to plead guilty to a lesser included  
18 count of robbery in full satisfaction of all of the charges  
19 that he was indicted on.

20 I expect that the government will tell you that this  
21 cooperation agreement is motivation for Anthony Baynes to tell  
22 the truth throughout the course of this trial. The evidence is  
23 going to show that Anthony Baynes is only motivated to help  
24 himself, just like his actions showed the night he changed his  
25 story over and over and over again.



E85nchr2

Opening - Mr. Strazza

1           Now, the government knows that the testimony of  
2 cooperating witnesses is sometimes tough and that it's tough  
3 for juries to deal with and that sometimes jurors have a hard  
4 time with it. So the way they handle this is they take that  
5 evidence, that testimony from these cooperators, and they try  
6 to use the tangible evidence that we spoke about earlier and  
7 corroborate each other.

8           But, ladies and gentlemen, one piece of weak evidence  
9 mixed with another piece of weak evidence that doesn't make  
10 strong evidence. If you pour ten weak cups of coffee into a  
11 pot, you don't have one pot of strong coffee. It's the quality  
12 of the evidence that counts, not the quantity -- excuse me, it's  
13 the quality not the quantity.

14           I am going to sit down now, and I'm going to let my  
15 colleagues talk about more about what we expect the evidence to  
16 show throughout the course of this trial. Before I do, I'm  
17 only going to ask you to do one thing, be the fair and  
18 impartial juror you would want sitting in your seat if you were  
19 on trial accused of these serious crimes.

20           MR. STRAZZA: Thank you.

21           THE COURT: Thank you, Mr. Strazza.

22           Does Mr. Whitaker wish to make an opening statement?

23           MR. GOLTZER: He does.

24           THE COURT: Mr. Goltzer.

25           MR. GOLTZER: Thank you.

E85nchr2

Opening - Mr. Goltzer

1           May it please the Court, Mr. Whitaker, Ms. Stafford,  
2           the gentlemen at the prosecution and defense table, the  
3           prosecution team, to all of you who are interested in being  
4           here and most of all to you, ladies and gentlemen of the jury,  
5           good afternoon.

6           My name is George Goltzer. Along with Ms. Ying  
7           Stafford, we are going to be representing Tyrell Whitaker.  
8           With Court's permission, I would ask Mr. Whitaker just for a  
9           moment to stand up and face the jury.

10          Thank you, Tyrell, you may sit down.

11          Ladies and gentlemen of the jury, the reason you are  
12          here today, as far as I am concerned and as far as Mr. Whitaker  
13          is concerned, is that Mr. Whitaker stood before a judge and  
14          said: I plead not guilty. I would like a trial by a jury.

15          On behalf of Mr. Whitaker and his defense team, we  
16          would like to thank each and every one of you for taking time  
17          out of your busy lives and being his jury.

18          As a defense lawyer, I am not obliged to say anything  
19          or do anything. I am not obliged to prove anything. But  
20          Ms. Stafford and I intend to take an active role on his part,  
21          and we intend to demonstrate to you, to each and every one of  
22          you, that the prosecution cannot and will not prove in this  
23          courtroom beyond any reasonable doubt that Tyrell Whitaker is  
24          guilty of the crimes with which he is charged. Indeed, we will  
25          show you that there is every reason to believe that he was not

E85nchr2

Opening - Mr. Goltzer

1 present, didn't rob anybody, didn't have a gun, didn't shoot  
2 anybody. The evidence against Tyrell Whitaker I will show you  
3 is seriously flawed.

4 Before I do that and explain to you what I intend to  
5 prove and what the evidence will show, let me tell you what  
6 Mr. Whitaker is not charged with in this courtroom and let me  
7 tell you what you will not see in this courtroom.

8 Number one, I know the Court read you the charges. He  
9 did it rather eloquently, but it's difficult to comprehend and  
10 absorb everything all at once. We have been living with this  
11 case for a long time, both sides of the aisle, but you are  
12 hearing it for the first time.

13 Mr. Whitaker is not charged in this courtroom with  
14 being a member of a drug conspiracy. You are not going to be  
15 asked to decide whether he was or was not a member of a drug  
16 conspiracy. He is not charged in that count.

17 Mr. Whitaker is not charged in this indictment with  
18 the first charge, which is a robbery conspiracy or an agreement  
19 to commit a robbery. You will not be asked to decide whether  
20 he conspired or agreed with other people to commit a robbery on  
21 December 15, 2010.

22 From where I stand, the question that I will ask you  
23 to decide when the case is over, when the evidence has been  
24 presented, is whether Mr. Whitaker has been proved beyond a  
25 reasonable doubt to have actually taken part in the robbery on

E85nchr2

Opening - Mr. Goltzer

1 December 15, 2010 and whether Mr. Whitaker took part in what is  
2 essentially a terrible, terrible murder on December 15, 2010.

3 Let's go back to the evening of those horrible events  
4 when Mr. Jeffrey Henry was shot, when there were robberies,  
5 when there were stabbings, when there were injuries, when there  
6 was, as the government put it, chaos or mayhem at 54 Chambers  
7 Street in Newburgh, New York.

8 At about 27 minutes after midnight on December 15,  
9 2010, calls went out to the Newburgh Police Department. Shots  
10 were fired. The Newburgh Police Department responded as  
11 quickly and as properly as they could.

12 They responded to a couple of locations. They  
13 responded to Chambers, they responded to the location where  
14 Mr. Henry was supposed to be, and they responded to a hospital  
15 in Newburgh, New York.

16 They found three people there. They found Mr. Henry,  
17 who couldn't talk to anybody, he was dying. They found Baynes,  
18 who was clearly bleeding from a stab wound and they found one  
19 of the victims of the robbery.

20 Shortly after the police arrived, Baynes was  
21 interviewed by a detective from the Newburgh Police Department  
22 named Loscerbo. It is a very important interview. What he  
23 told Loscerbo shortly after midnight, shortly after the robbery  
24 and shooting occurred, was that he and a friend of his by the  
25 name of Laquavious -- Laquavious. I never get it right.

E85nchr2

Opening - Mr. Goltzer

1 Laquavious -- Quay Quay was the nickname -- Boykin. They were  
2 with two other people named Bash and Baby E. Bash and Baby E  
3 were friends of theirs, and Bash and Baby E had guns.

4 Bash they told the police over a period of that day  
5 had a silver gun that had a wheel on it, meaning a silver  
6 revolver, and that it was Bash and the other fellow, Baby E,  
7 who wanted to rob a drug spot at 54 Chambers Street.

8 Within an hour or two after the robbery, the attempted  
9 robbery, unlike what the government will prove, we will prove  
10 that he wasn't trying to protect his friend. In fact, he had  
11 already implicated two of his friends, Bash and Baby E. What  
12 he told Loscerbo was that he and Quay Quay wanted nothing to do  
13 with the robbery that they were going to commit.

14 What he told the police was, We left. We went  
15 someplace else. We went into a house. After a while, we came  
16 back outside because we were curious. We wanted to see if Bash  
17 and Baby E had committed the robbery. This is what they were  
18 talking to Detective Loscerbo about. So we went back outside,  
19 and there were shots. They committed the robbery. They  
20 committed the crime.

21 That wasn't a very good story, and the police knew it  
22 wasn't a very good story. And by 9 o'clock in the morning,  
23 after he had had a chance to sleep on it, Baynes realized it  
24 wasn't a very good story, because Baynes knew that the police  
25 were going to discover that he was inside, because the police

E85nchr2

Opening - Mr. Goltzer

1 were already interviewing the man who stabbed him.

2 So he had to come up with a better story. You are  
3 going to hear that story, if not on direct examination on cross  
4 examination by one of the defense lawyers.

5 The second story he told was as follows: Quay Quay  
6 and I were walking down the street minding our own business.  
7 We saw a group of men. They started shooting. I got hurt.

8 The police didn't buy that story either, so he told  
9 another story. He said basically, and this is really  
10 important, I didn't want to commit a robbery. Quay Quay didn't  
11 want to commit a robbery. We were afraid that Raymond  
12 Christian, Quay Quay's brother, was involved, and we wanted to  
13 go make sure he was OK. So that's why we went there, and  
14 that's why I went in, to be my friend's brother's keeper. He  
15 told that story.

16 Then he told another story and another story, and you  
17 are going to hear all the stories that this man told the day  
18 after the robbery.

19 You are going to learn that the one thing he never  
20 said on that day was that a Bow Wow, which is Whitaker's street  
21 name or nickname, or Gucci, which is Thomas' nickname or street  
22 name, while he was implicating two of his dear friends and the  
23 brother of a dear friend in a crime that he was falsely trying  
24 to avoid, he never told the police in all of those statements  
25 that Tyrell Whitaker or Glenn Thomas were part of that crime.

E85nchr2

Opening - Mr. Goltzer

1           That's how things stood for six months. In April of  
2           2011, he was indicted for murder in Orange County in the state  
3           court. This is Mr. Baynes. Mr. Baynes stood before a judge,  
4           pled not guilty, and as a 16-year-old defendant charged with  
5           murder and robbery, he was facing the rest of his life in a  
6           cage.

7           On May 11, 2011, for the first time, six months after  
8           the crime, he decided to point the finger, and it's easy to  
9           point a finger, he decided to point the finger at Tyrell  
10          Whitaker and Glenn Thomas.

11          What he originally told the police was, in one of his  
12          stories on that day, it was me, it was Laquavious, it was Bash,  
13          it was Baby E. I went in to take care of Christian, and there  
14          were a group of other men there and I didn't recognize them.

15          Six months later, when he decided to snitch his way  
16          out of a life sentence, he points the finger at Tyrell Whitaker  
17          and he points the finger at Glenn Thomas in the same way that  
18          he told about Mr. Christian, I needed a reason to go in there,  
19          so I was worrying about Mr. Christian.

20          This fellow Baynes made a really sweetheart deal for  
21          himself. He was facing life in prison with a 15- to 25-year  
22          mandatory minimum before he would be eligible for parole in New  
23          York State on the life term, and he cut the following deal in  
24          writing: You cooperate with the Orange County district  
25          attorney's office and you cooperate with these folks from the

E85nchr2

Opening - Mr. Goltzer

1 Southern District of New York federal prosecutors and you won't  
2 face a life term. You will face a first degree robbery count.  
3 All you have to do is cooperate and tell the truth. And if you  
4 don't do that, if you breach the agreement, you still won't  
5 face murder charges. We will recommend 17 years. That is a  
6 lot of time, but that's not life.

7 If you do cooperate properly, we, the Orange County  
8 district attorney's office, will tell the judge what you did,  
9 and you can get any legal sentence and any legal sentence in  
10 that situation is as little as five years, which means that  
11 after this trial he hopes to go home. That's the deal he made.

12 On the day he pled guilty, the prosecutor actually  
13 stood up in front of him in court and said, if you can do  
14 better, we'll let you take the plea back and you can plead  
15 guilty in the federal court.

16 That is their star witness. That's the only witness  
17 in the case who claims to have seen Tyrell Whitaker inside of  
18 that location. The government is going to try to put that  
19 silver gun with the wheel in Tyrell Whitaker's hands. They  
20 claim that they have a witness by the name of Mallory who is  
21 going to help them do it, who saw Whitaker take that gun, who  
22 gave the gun back. You heard him.

23 What we are going to show you is that Mr. Mallory was  
24 another cooperator who entered into an agreement with the  
25 government and became what is commonly known as a snitch or a



E85nchr2

Opening - Mr. Goltzer

1 rat, but I would like to say in more delicate terms a  
2 tattletale.

3 Mr. Mallory told several stories about that gun.  
4 Mr. Mallory said to the government, I never saw that gun after  
5 the robbery. And Mr. Mallory said I saw that gun in  
6 Mr. Whitaker's hands two days after the robbery. Then  
7 Mr. Mallory said, wait a minute, I could be wrong. Maybe it  
8 was two days before the robbery.

9 Mr. Mallory has a lot of stories to tell. And what  
10 will prove that Mr. Mallory is not worthy of your belief is  
11 Mr. Mallory's claim that he can identify voices on a 911 tape  
12 as Mr. Thomas and Mr. Whitaker and he can identify people on a  
13 videotape.

14 You are going to see the videotape of people going  
15 back and forth on the streets of Newburgh on the evening of  
16 December 15. You jurors are going to see it. You will hear  
17 the 911 tape.

18 I promise you that you will find that you couldn't  
19 identify your mother's voice on that tape, and you couldn't  
20 identify her face on that videotape. It is just not there.

21 That is the quality of the evidence that the  
22 government is going to present to you, and that's how we are  
23 going to expose it.

24 There is a man named McDermott who is going to testify  
25 in this courtroom. You have to understand that after Baynes,

E85nchr2

Opening - Mr. Goltzer

1 who was a serial robber who himself admitted to committing  
2 eight or nine or ten robberies over his lifetime with guns, who  
3 was dealing drugs, who was generally a bad kid, after Baynes  
4 pointed the finger at these people, the government scraped the  
5 bottom of the barrel, and they came up with two witnesses,  
6 Mallory and McDermott, who were essentially roommates. One of  
7 them had been in jail with Baynes and was talking about the  
8 case.

9           They both coincidentally became informants, Mallory  
10 and McDermott, in January of 2012. McDermott had been arrested  
11 for serious crimes and needed to snitch his way out. He is  
12 awaiting sentence as I speak on a first degree assault case in  
13 the New York State courts, facing up to 25 years in prison.

14           He claims, falsely we will show you, that on the night  
15 of the robbery, Whitaker walks in with blood all over his  
16 clothing.

17           There's only one problem. Even if you believe that  
18 Whitaker was there according to Baynes' testimony, which he was  
19 not, no testimony will put Whitaker or the guy they claim is  
20 Whitaker in contact with anybody who's bleeding. This fellow  
21 McDermott is such a good witness with such a good memory that  
22 on one occasion he said to the government at least a year and a  
23 half after the crime, I can tell you that Tyrell Whitaker was  
24 wearing a red and blue sweatshirt with a hood. And the brand  
25 name of the sweatshirt was Hollister. That's how good he

E85nchr2

Opening - Mr. Goltzer

1 claims his memory is. It's remarkable. On another occasion,  
2 he said, no, the Hollister shirt was black.

3 There was no blood. Tyrell Whitaker wasn't there.  
4 Tyrell Whitaker didn't bring a gun to or from a place. He's  
5 not guilty, and that's what the evidence is showing to show.

6 There is a process that we are going to introduce you  
7 to. It is a process known as the proffer process. It is a  
8 process known as the cooperation agreement process.

9 You are going to learn how the government both in  
10 state courts and in federal courts goes through the process of  
11 interviewing these people and preparing them to testify for  
12 hour after hour after hour. You are not going to get a witness  
13 who walks into court and says, They asked me to come in and  
14 tell you what happened. I am going to give you my spontaneous  
15 version of events. They are interviewed time and time and time  
16 again.

17 That's when, after that process is over, they enter  
18 into these so-called cooperation agreements. These agreements  
19 are written in a way that is most palatable to you. You will  
20 learn that what the government puts in these agreements is the  
21 following, If you lie, if you violate this agreement, if you  
22 don't tell the truth, if you commit another crime, we are going  
23 to tear up your agreement. You are going to get everything you  
24 pled guilty to.

25 You, Mr. Mallory, pled guilty to crimes that carry

E85nchr2

Opening - Mr. Goltzer

1 potential penalties of a mandatory minimum of 17 years in the  
2 federal penitentiary and a possible maximum of life. If you  
3 don't tell the truth, we can prosecute you for all these  
4 crimes.

5 But what they said to Mr. Baynes was, you already  
6 heard it, you can do better if you want to go to federal court.  
7 Well, Mr. Baynes doesn't want to go to federal court.  
8 Mr. Baynes will never face, as these defendants face, life  
9 sentences --

10 MR. BAUER: Objection, your Honor.

11 THE COURT: Ladies and gentlemen, as I instructed you  
12 before, the subject of sentencing or punishment is not for the  
13 jury. It's for the judge. Mr. Goltzer.

14 MR. GOLTZER: I am not asking you to consider  
15 sentences, ladies and gentlemen. That's up to the judge. What  
16 I'm asking you to consider and what I am going to prove to you  
17 is that these particular witnesses, particularly, Mr. Baynes is  
18 not going to face a life sentence in a federal courtroom.  
19 That's the deal he made even if he lies.

20 And Mr. Mallory breached his agreement and nobody tore  
21 it up. Mr. Mallory was out. Mr. Mallory had promised that he  
22 would behave himself and not use drugs anymore. Mr. Mallory  
23 used marijuana and ecstasy and failed drug tests and violated  
24 that.

25 Mr. Mallory had promised the government that he would

E85nchr2

Opening - Mr. Goltzer

1 tell them everything he ever did, and they confronted him with  
2 robberies that he committed while he was cooperating for the  
3 government. And you will not hear the sound of paper being  
4 torn in this courtroom by them tearing up his agreement.

5 By the time we are finished with this evidence and  
6 with this trial, you will have many reasons to doubt whether  
7 the government is has proved its case, and that's why you are  
8 here.

9 You are not here to decide whether Mr. Whitaker was a  
10 petty drug dealer in Newburgh. By the way, they found about  
11 6/1000ths of a gram of heroin on him at one time. There was  
12 testimony that he was out there pitching packages. He is not  
13 charged with that.

14 We can only appeal to your decency and your ability to  
15 follow the instructions given by the Court, that you not say  
16 I'm not going to like him because he was a member of the gang,  
17 as everybody else in the room was, and that's why I am going to  
18 convict him. You have to believe beyond a reasonable doubt  
19 that he committed the crimes he is charged with in the  
20 indictment, and I am going to tell you at the end of this case  
21 we will have demonstrated to you that it wasn't proven, he's  
22 not guilty, and we will ask you to follow the law and follow  
23 the oath that you took and find him on each and every one of  
24 these very, very serious charges not guilty.

25 Thank you.

E85nchr2

Opening - Mr. Goltzer

1 THE COURT: Thank you, Mr. Goltzer.

2 MR. GOLTZER: Thank you, Judge.

3 THE COURT: Did Mr. Thomas wish to make an opening  
4 statement?

5 Mr. Buchwald.

6 MR. BUCHWALD: Good afternoon, ladies and gentlemen.  
7 May it please the Court, my name is Don Buchwald. Along with  
8 my colleagues, Josha Dratel and Levi Downing, we represent  
9 Mr. Glenn Thomas.

10 Mr. Thomas would you stand up, please. That is  
11 Mr. Thomas.

12 Our position in this trial is also very, very clear.  
13 Mr. Thomas did not participate in any of the events of December  
14 15, 2010. He wasn't involved in a robbery at 54 Chambers  
15 Street in Newburgh. He wasn't involved in a robbery conspiracy  
16 that lasted from 2008 to 2012.

17 As a matter of fact, he wasn't even in Newburgh for  
18 three and a half of those four years. He wasn't involved in a  
19 drug conspiracy which they claim went from 2008 to 2012. He  
20 wasn't in Newburgh during three and a half of those years, and  
21 during the period of time that he was there he was not involved  
22 in robberies of drug dealers, he was not involved in sales of  
23 drugs. There may have been some marijuana smoking, involvement  
24 with marijuana on his part, but not the sales, not drug  
25 conspiracy. That is our simple position, and that is one we

E85nchr2

Opening - Mr. Goltzer

1 will prove over the next two to three weeks at this trial.

2 Ladies and gentlemen, as counsel for the codefendants  
3 indicated, this trial is largely going to come down to the word  
4 of Anthony Baynes.

5 You are not going to find with respect to Mr. Thomas  
6 any forensic or physical evidence whatsoever that ties him in  
7 either to the events of December 15, 2010 or to a robbery  
8 conspiracy or a drug conspiracy. You will find no  
9 fingerprints, you will find no clothes left behind, you will  
10 find no DNA.

11 There is a 911 call from Mr. Henry where you are going  
12 to hear about a second and a half of a voice in the background.  
13 That certainly is not Mr. Thomas' voice, but it will be  
14 absolutely impossible, I suggest to you, to understand whose  
15 voice it is with that length of time.

16 The government has access, we will show, to the most  
17 sophisticated equipment in the world to try to make voice  
18 identifications. They didn't even attempt to do that because  
19 they know that with a snippet that small you can't possibly  
20 make a voice identification. And anybody who comes in here and  
21 says that was Mr. Thomas' voice or that was Mr. Whitaker's  
22 voice you will know cannot possibly be telling the truth and  
23 isn't telling the truth.

24 They have pole cameras in Newburgh. There are cameras  
25 on many of the street corners. The night of December 15, 2010,

E85nchr2

Opening - Mr. Goltzer

1 there were cameras set up at First Street about a block away  
2 from 54 Chambers where the robbery and the shooting occurred.

3 There will be certain facts which I think we will be  
4 able to agree on. You are going to see seven people, seven  
5 people heading a few minutes before the shooting, a few minutes  
6 before the 911 call so you are able to know the time, heading  
7 in the direction of 54 Chambers Street. You are going to see a  
8 few minutes later, around the time or shortly after the 911  
9 call, you are going to see seven people in the opposite  
10 direction.

11 You are going to see them all head on down First  
12 Street, except one of them turns left on Lander Street. Lander  
13 Street is a block away, perpendicular to chambers in Newburgh.  
14 You are going to hear, and we will show you during the course  
15 of this trial, Mr. Thomas lives way up on Lander in the  
16 opposite direction. One would have turned right if one was  
17 going to go to Mr. Thomas' home, but instead six people proceed  
18 on First Street and one person turns left, so you are going to  
19 have a number of seven.

20 And you are going to hear from the various witnesses,  
21 depending on who you believe, and you remember you have  
22 victims, you have some civilian witnesses outside or in the  
23 neighborhood, and you have Mr. Baynes, who was there, and you  
24 have to evaluate each of their testimony in a somewhat  
25 different way.



E85nchr2

Opening - Mr. Goltzer

1           You have heard from the judge witnesses like Baynes  
2 and Mallory are folks, the government is presenting evidence  
3 from people like this, but your oath as jurors requires that  
4 you follow the law and that you give such evidence extra care  
5 and scrutiny before you accept it.

6           So you are going to be evaluating the testimony of  
7 these various people using various criteria, your own common  
8 sense, but by and large you are going to be hearing from five  
9 people, maybe four, maybe six, but five people it sounds like  
10 go into that apartment at 54 chambers. You are going to hear  
11 the various stories that Mr. Baynes tells the authorities,  
12 starting with -- what happened to the thing of water?

13           THE COURT: Water?

14           MR. GOLTZER: I thought it was mine.

15           MR. BUCHWALD: I wish I could blame it on Mr. Baynes,  
16 taking my water.

17           You are going to hear the various stories of  
18 Mr. Baynes, when he is not protecting friends, but on that very  
19 night as he's at the hospital where he's been stabbed and he's  
20 making up story after story.

21           His first story is simply he and his friend Quay Quay  
22 walking down the street late at night, and a group of black men  
23 come in the other direction and suddenly somebody shoots him.

24           Of course, that doesn't work very well. When he  
25 thinks about it, he's going to realize he's got some problems,

E85nchr2

Opening - Mr. Goltzer

1 like his blood in the apartment where he was stabbed.

2 And then he moves on to, no, it was me and Quay Quay  
3 and Bash and Baby E. We were all together and some people  
4 discussed perhaps robbing a weed place on 54 Chambers, but we  
5 told Bash and Baby E we didn't want to do that. So later on we  
6 went to look for them, and as we're walking on down a group of  
7 black males passed us, and that's when I was stabbed, and we  
8 started to run and we saw Bash and Baby E running and they had  
9 guns. That was story No. 2.

10 And then story No. 3 as the night progresses is, well,  
11 actually we heard a larger group earlier in the night planning  
12 on doing this robbery at 54 Chambers, so we went with them. We  
13 decided after we went back to our own home and we watched  
14 Facebook and we played on the computer, gee, where is Quay  
15 Quay's brother? He might be involved in that. Let's see if  
16 they actually robbed some place, and so we went over in that  
17 direction and then we heard a commotion and I got stabbed.

18 Then it changes again: Yeah, we went over and I  
19 actually looked inside, says Baynes, I could see inside, and we  
20 saw Quay Quay's brother and he needed help so we raced inside  
21 to try to help him, and that's when I got stabbed.

22 You are going to go through it, and what he has is  
23 five people, five people involved and going on him. When he  
24 gets to his final story in the morning to Detective Cortez  
25 after he has spoken to Loscerbo earlier in the day, he had

E85nchr2

Opening - Mr. Goltzer

1 himself and Bash and Baby E and Quay Quay's brother and Quay  
2 Quay. He has five people involved.

3 And it stays that way, ladies and gentlemen. It stays  
4 that way until May of the following year. In the interim you  
5 are going to learn that Mr. Thomas was arrested for a gun  
6 possession in February of 2011, a gun which has absolutely  
7 nothing to do and no connection with this robbery. It was an  
8 inoperable gun, but it was loaded, and he was arrested for it  
9 and that was publicized.

10 Baynes knew about it, and at that point in time,  
11 Thomas became an easy patsy for Baynes to try to substitute  
12 into the group. Baynes has himself outside still in May of  
13 2011, claiming that Bow Wow -- and then the next time he speaks  
14 to the prosecutors claiming that Bow Wow and Mr. Thomas are in  
15 the premises. So you are going to see as he extricates himself  
16 he starts to insert two new people into the crime.

17 You are going to know, ladies and gentlemen, that he  
18 is lying, because all of the way through until this day he  
19 maintains he wasn't armed, Quay Quay wasn't armed. Initially  
20 he's saying Bash and Baby E were armed, then he is saying Bash  
21 and Baby E and Bow Wow were armed, then he is saying Bash and  
22 Baby E and Bow Wow and Gucci were armed.

23 Until this day he claims he wasn't armed. We are  
24 going to present to you, if they don't, one of the victims of  
25 that crime, one of the victims in the house, a fellow by the

E85nchr2

Opening - Mr. Goltzer

1 name of Tarrence Smith. He is one of the people who was in 54  
2 Chambers. Tarrence Smith will tell you that he saw a wrestling  
3 match between one of the robbers and a fellow by the name of  
4 Akinto who was also in the house, and he went over to help  
5 Akinto, and Akinto wrestled the gun away from a guy, was able  
6 to get control of the gun, and that he, Tarrence Smith, stabbed  
7 that guy.

8 We know these things because we have the prior  
9 statements of some two and a half weeks before this trial  
10 started. We were given the prior statements as the law  
11 requires of people who have testified so that we have a chance  
12 to see what they have said and to be able to prepare the  
13 cross-examination.

14 That is what he said. He said that he stabbed the man  
15 whose gun was taken from Akinto. You will hear, ladies and  
16 gentlemen, notwithstanding Baynes' claim that he never had a  
17 gun, that he was armed the whole time, that Baynes himself was  
18 the person who had that gun. You are going to hear that the  
19 claims about the chrome gun and about a black gun which Baynes  
20 and Mallory are putting in the hands of Whitaker and Thomas,  
21 and they are claiming these are the guns, these are the  
22 revolvers, these are the .38s that they allegedly shot Jeffrey  
23 Henry with.

24 But we are going to present to you, ladies and  
25 gentlemen, forensic evidence -- if they don't present it, we

E85nchr2

Opening - Mr. Goltzer

1 are going to present it -- evidence concerning the shell  
2 casings, evidence concerning the bullets that were found,  
3 evidence concerning the bullets that were in Jeffrey Henry,  
4 that were found during the autopsy, and Jeffrey Henry was  
5 killed with two bullets from a nine millimeter gun.

6 (Continued on next page)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E859chr5

Opening - Mr. Buchwald

1 MR. BUCHWALD: (Continuing). Nine millimeter gun.

2 We ask you to remember that as you're hearing the  
3 testimony from the various witnesses, particularly Baynes and  
4 then Mallory when they're testifying because it helps put the  
5 lie to their testimony. It's not like TV where you  
6 cross-examine somebody and they start to cry in the middle and  
7 say "I did it." I don't know if everybody is old enough to  
8 remember Perry Mason. Not one of you is old enough to remember  
9 Perry Mason -- well maybe one. That's the way it would happen  
10 on Perry Mason. That's not the way it happens in real life.  
11 You show that they're lying about things of significance,  
12 things which according to their plea agreements oh, if they  
13 lie, the deal goes out. But you'll know that they're lying  
14 when you see the forensic evidence and when you see the autopsy  
15 report.

16 Yes. Jeffrey Henry was shot and killed with three  
17 bullets that were found during the autopsy. Three bullets --  
18 two -- three bullets were found during the autopsy.

19 Two are nine millimeter bullets, the new shots from  
20 that evening, from December 15 of 2012. There's one other  
21 bullet in his shoulder. From events, and the medical office  
22 will examiner will testify to this, from events nine years or  
23 ten years or however long before. And they know when it's a  
24 new bullet or an old bullet because inside the body when a  
25 bullet has come in there's, of course, a track that you see

E859chr5

Opening - Mr. Buchwald

1 that the bullet took. If the bullet stays in you for a long,  
2 long period of time things heal around it and there is no  
3 track. And the medical examiner from Newburgh will testify  
4 unequivocally that that third bullet that is in him is from  
5 years and years ago. What he is shot with, what he is killed  
6 with, two nine millimeter bullets.

7 Ladies and gentlemen, we're going to show from the  
8 forensic evidence that there are a total of eight shots fired  
9 that evening. They are all accounted for, including the shot  
10 that hits Terrence Smith from one of the robbers, including the  
11 shots that Akinto takes. He's the robber who wrestles the gun  
12 away from Baynes. The shots that he takes because they find  
13 the casings. They find a total of six casings and eight  
14 bullets. And you're going to hear them, ladies and  
15 gentlemen -- if they don't elicit it, we will. If they don't  
16 elicit it, we will.

17 You're going to hear testimony that these -- what you  
18 have when an automatic weapon is fired, you have casings that  
19 come out and bullets. And there should be an equal number when  
20 a revolver is fired, which would be a .38, there is no casing.  
21 It stays in the weapon. So you're going to find that there are  
22 two .38 caliber shots that were fired for which no casings were  
23 found. But you're going to find a total of eight shots.

24 And you're going to see, ladies and gentlemen, their  
25 theory that shots are fired out the door, two shots fired out

E859chr5

Opening - Mr. Buchwald

1 the door that kill Henry that couldn't possibly have been done  
2 the way they claim by .38s that are being held by Bow Wow and  
3 Gucci.

4 Ladies and gentlemen, I'm going to ask you -- and I  
5 know it's hard, these names are being thrown at you and the  
6 stuff about the ballistics. Probably doesn't make great  
7 clarity right now until the actual testimony comes in. But  
8 it's important because you're going to be hearing Baynes'  
9 testimony the next day or two or Monday or tomorrow or whenever  
10 and you're not going to hear the testimony from Terrence Smith  
11 until much later in the trial. So it's important to know as  
12 he's testifying, as Mallory is testifying that there is this  
13 fellow, the victim who knows that the guy who's stabbed is the  
14 guy whose gun was wrestled away and you will know that the guy  
15 that is stabbed is Baynes. He's the one in the hospital. He's  
16 the one whose blood is found at the scene and matched.

17 So these things are very, very important. The  
18 government controls the order of witnesses. And that's why we  
19 want to point out certain things that are going to happen later  
20 in the trial as you evaluate the earlier testimony.

21 With respect to Mr. Mallory, he is someone who has  
22 lied consistently, someone who, even after his agreement,  
23 continued to commit crimes; someone who continued to commit  
24 robberies while he was supposedly cooperating with the  
25 authorities. But ultimately it is Baynes' testimony and



E859chr5

Opening - Mr. Buchwald

1 Baynes' testimony alone that the government hangs its hat on  
2 when it suggests that Glenn Thomas was involved in these events  
3 of December 15.

4 I'm going to ask you if you would, I'm going to  
5 suggest one or two dates to keep in mind. You have notepads  
6 that you can use during the course of the trial to the extent  
7 that you think useful.

8 January 2012. It will be very, very important. When  
9 you hear from us again in summations, whether it's Mr. Dratel  
10 or myself on behalf of Mr. Thomas, January 2012, to see what  
11 events have occurred before that time and what events have  
12 occurred after that time. That's the time when the coincidence  
13 of Mallory and McDermott both suddenly offering to make deals  
14 to get out from under the horrendous crimes that they have  
15 committed.

16 You're going to hear, ladies and gentlemen, about the  
17 eight or nine or ten likely people -- except we know that there  
18 are only seven who actually commit the offense -- who actually  
19 are walking in that video, who actually are going down to the  
20 area of 54 Chambers Street, five of whom go into that building,  
21 including Mr. Mallory himself as one of those likely  
22 participants.

23 You're going to hear about a fellow whose nickname and  
24 street name is Snelly. You're going to hear about a fellow  
25 whose street name is L-1. You're going to hear all of this

E859chr5

Opening - Mr. Buchwald

1 testimony about people who are involved, who it is claimed were  
2 the shooters or participated in the robbery that evening.

3 And when all is said and done, ladies and gentlemen,  
4 when all is said and done I suggest to you that you will return  
5 the one verdict consistent with your oaths as jurors,  
6 consistent with the presumption of innocence that Mr. Thomas is  
7 entitled to, consistent with the requirement that you consider  
8 testimony of people like Baynes and Mallory with extra caution  
9 and care, consistent with the total absence of forensic or  
10 physical evidence that corroborates what they say, and that is  
11 a verdict of not guilty.

12 Thank you.

13 THE COURT: Thank you, Mr. Buchwald.

14 Mr. Bauer, does the government have its first witness?

15 MR. BAUER: Your Honor the government calls Elena  
16 Gardner.

17 THE COURT: Did you want to move the podium.

18 Is someone tasked with getting Ms. Gardner?

19 Ms. Gardner, step all the way up along the front of  
20 the jury box and step into the witness stand and remain  
21 standing. Please watch any wires that may be on the floor.

22 ELENA MARIA GARDNER,

23 called as a witness by the Government,

24 having been duly sworn, testified as follows:

25 THE COURT: Mr. Bauer.

E859chr5

1 MR. BAUER: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MR. BAUER:

4 Q. Ms. Gardner, how old are you?

5 A. 43.

6 Q. Where did you grow up?

7 A. Newburgh.

8 Q. Is that in Newburgh, New York?

9 A. Yes.

10 Q. How far did you go in school?

11 A. Tenth grade.

12 Q. Did you finish the tenth grade?

13 A. No.

14 Q. So did you finish the ninth grade?

15 A. Yes.

16 Q. Do you have any degrees?

17 A. I have my GED.

18 Q. And approximately when did you get your GED?

19 A. 2006.

20 MR. GOLTZER: Forgive me.

21 THE COURT: You can move the microphone closer to you.

22 Please speak directly into the microphone.

23 THE WITNESS: 2006.

24 Q. Are you currently employed?

25 A. No.

E859chr5

Gardner - direct

1 Q. When is the last time that you worked?

2 A. 2008.

3 Q. And in 2008 what were you doing?

4 A. I was a food packaging, shipping and receiving at a -- an  
5 Indian restaurant.

6 Q. How long did you work there for?

7 A. Six months.

8 Q. Why did you stop working there?

9 A. Because in a blast chiller, in a freezer, working in a  
10 freezer. I was getting sick.

11 Q. So since 2008 have you had any other income or any other  
12 funds that you received?

13 A. No.

14 Q. Do you have any money that comes in every month?

15 A. My son. My son receives disability. I receive social  
16 services.

17 Q. Ms. Gardener, have you been subpoenaed to testify here  
18 today?

19 A. Yes.

20 Q. Do you want to be here?

21 A. No.

22 Q. Why not?

23 MR. GOLTZER: Objection.

24 THE COURT: Sustained.

25 Q. Are you here because the subpoena is making you be here?

E859chr5

Gardner - direct

1 A. Yes.

2 Q. In response to that subpoena did you tell the government  
3 that you would consider asserting your Fifth Amendment right  
4 not to incriminate yourself?

5 A. Yes.

6 Q. By "incriminate yourself," I mean to get yourself in  
7 trouble with your testimony here today?

8 A. Yes.

9 Q. Have you reviewed an order that was signed by the judge  
10 relating to your testimony?

11 A. Yes.

12 Q. What do you understand that order to require of you?

13 A. Speak the truth. And immunity.

14 Q. What protections does that order provide for you?

15 A. That I won't be discriminated for whatever I say.

16 Q. You won't be discriminated?

17 A. From myself.

18 Q. So earlier you used the term immunity. What does that  
19 mean?

20 A. Oh, God.

21 Q. Does immunity mean what we talked about just before, that  
22 you wouldn't get in trouble for your testimony?

23 A. Yes.

24 Q. Do you know what protection the order gives you if you  
25 testify falsely?

E859chr5

Gardner - direct

1 A. Yes.

2 Q. What -- does the order protect you if you testify falsely?

3 A. No.

4 Q. Ms. Gardener have you ever used any drugs?

5 A. Yes.

6 Q. What drugs?

7 A. Marijuana.

8 Q. When did you start using marijuana?

9 A. My late teens.

10 Q. Have you stopped?

11 A. No.

12 Q. So in 2014 now you're still using marijuana?

13 A. Yes.

14 Q. How often?

15 A. Everyday.

16 Q. And how about back in 2010, how often were you using  
17 marijuana?

18 A. Everyday.

19 Q. Have you ever sold drugs?

20 A. Yes.

21 Q. What drugs have you sold?

22 A. Crack.

23 Q. When did you first sell crack?

24 A. In my late 20s.

25 Q. When is the last time that you sold crack?

E859chr5

Gardner - direct

1 A. 2009.

2 Q. Why did you stop in 2009?

3 A. I went to prison.

4 Q. When you went to prison did you go to prison because you  
5 were selling crack?

6 A. Yes.

7 Q. So you were arrested for selling crack?

8 A. Yes.

9 Q. Did you plead guilty to those charges?

10 A. Yes.

11 Q. Ms. Gardner, when is the last time that you were arrested?

12 A. March 2014.

13 Q. Where were you?

14 A. In a car in the City of Newburgh.

15 Q. Were you by yourself in that car?

16 A. No.

17 Q. Who were you with?

18 A. Akinto Boone and Tamia Hayes.

19 THE COURT: What were those names?

20 THE WITNESS: Akinto Boone and Tamia Hayes.

21 Q. Whose car was it?

22 A. Akinto's mom. It was a rental from North Carolina.

23 Q. And did the police stop the car?

24 A. Yes.

25 Q. Did the police find anything in the car?

E859chr5

Gardner - direct

1 A. Yes.

2 Q. What did they find?

3 A. Crack in the back seat.

4 Q. Whose crack was it?

5 A. Akinto Boone's.

6 Q. What happened to your arrest charges?

7 A. It got dropped to no parking -- not stopping at a stop  
8 sign.

9 Q. So you weren't made to plead guilty to any crack-related  
10 charges, correct?

11 A. No.

12 Q. Ms. Gardner, at this time I would like to draw your  
13 attention to the events that took place on December 15, 2010.  
14 Back then in 2010 where were you living?

15 A. 111 Johnston -- no 122 Johnston Street.

16 Q. Is that in Newburgh?

17 A. Yes.

18 Q. Do you remember where you were just after midnight on that  
19 day?

20 A. I was in a car.

21 Q. And were you in the car by yourself?

22 A. No.

23 Q. Who were you with?

24 A. Larry Cheery.

25 Q. Who is that?



E859chr5

Gardner - direct

1 A. He's behind you.

2 Q. He's here in the courtroom today. What is your relation?

3 A. He's a friend. He was taking me -- I called him to come  
4 pick me up to take me to the gas station.

5 Q. For what purpose?

6 A. Cigarettes.

7 Q. And where did Larry pick you up?

8 A. On Johnston, 122 Johnston.

9 Q. Your house?

10 A. Yes.

11 Q. And where did you go?

12 A. To on the -- we was going to Underrun. We came down -- we  
13 came down Farrington. And we turned down Lander and I seen  
14 somebody laying on the ground.

15 Q. So I'm sorry -- so you turned onto Lander from Farrington?

16 A. From Johnston.

17 Q. Okay. And you saw someone lying on the ground. Were they  
18 on the street or on the sidewalk?

19 A. On the sidewalk.

20 Q. And where on Lander Street?

21 A. 45A.

22 Q. 45A Lander Street?

23 A. Yes.

24 Q. Now when you saw this person lying on the ground what, if  
25 anything, did you and Mr. Cherry do?

E859chr5

Gardner - direct

1 A. We kept going at first and then we backed up.

2 Q. Why is that?

3 A. I don't know why. I just told him to back up and I got out  
4 the car, asked him if he been shot, if he needed help or  
5 something and he said, yeah, call the ambulance. So I called  
6 the ambulance.

7 Q. I'm sorry. So you spoke to the person that was lying on  
8 the ground?

9 A. Yes.

10 Q. And then based on that conversation you made a phonecall,  
11 you said?

12 A. Yes.

13 Q. Who did you call?

14 A. Called 911.

15 MR. BAUER: Your Honor, may I approach?

16 THE COURT: You may.

17 BY MR. BAUER:

18 Q. Ms. Gardner, I'm showing you what's been marked as  
19 Government Exhibit 282 for identification. Can you take a look  
20 at this and tell me if you recognize it?

21 A. Yes, I do.

22 Q. What do you recognize it to be?

23 A. CD.

24 Q. Did you --

25 A. With my initials on it and the date.

E859chr5

Gardner - direct

1 Q. I'm sorry. Continue.

2 A. My initials and the date that I signed it. And I signed it  
3 once I heard it.

4 Q. Do you know what's on the CD?

5 A. Yes.

6 Q. What is it that's on the CD?

7 A. My actual 911 call.

8 Q. And you said your initials are on here?

9 A. Yes.

10 Q. When did you initial it?

11 A. Today.

12 Q. Was that after listening to the call?

13 A. Yes.

14 MR. BAUER: Your Honor, the government offers Exhibit  
15 282 into evidence.

16 MR. GOLTZER: No objection.

17 THE COURT: Government's 282 will be received.

18 (Government's Exhibit 282 received in evidence)

19 MR. BAUER: Your Honor, may we have permission to  
20 publish it, in this case play it for the jury?

21 THE COURT: You may.

22 (Audio recording played)

23 BY MR. BAUER:

24 Q. Ms. Gardner, did the police eventually show up at that  
25 scene?

E859chr5

Gardner - direct

1 A. Yes.

2 Q. I'm sorry. Just to ask you about that recording. Did you  
3 recognize the voice on the recording?

4 A. Yes.

5 Q. Whose voice was it?

6 A. Mine.

7 Q. And when did you make that recording?

8 A. (No response).

9 Q. Or when did you make the phonecall that was recorded on  
10 that CD?

11 A. What do you mean when? Like --

12 Q. When did you make that call to 911?

13 A. December 15.

14 Q. Okay. I'm sorry. So the police eventually arrived?

15 A. Yes.

16 Q. What, if anything, did you see the police do when they got  
17 there?

18 A. They was talking to him and they zipped the coat down off  
19 his face.

20 Q. You saw them unzip his coat?

21 A. Yeah, off of his face.

22 Q. After they unzipped his coat, could you see who it was?

23 A. Yes.

24 Q. Did you recognize the person?

25 A. Yes.

E859chr5

Gardner - direct

1 Q. Who was it?

2 A. It was Joker. Jeffrey Henry.

3 Q. You said Jeffrey Henry, and then you said Joker?

4 A. Yes.

5 Q. Is that how you knew him?

6 A. Joker, yes.

7 Q. You knew him by the name Joker?

8 A. Mm-hmm.

9 Q. After they unzipped his jacket and you saw his face, what,  
10 if anything, else did you do?

11 A. I left and I went -- I went to his mother's house to tell  
12 her.

13 Q. And after you did that, after you went to his mother's  
14 house did you go anywhere else?

15 A. I went to the hospital.

16 Q. What hospital is that?

17 A. St. Luke's.

18 Q. And who, if anybody, did you see there at the hospital?

19 A. Besheltie.

20 Q. Besheltie?

21 A. Yes.

22 Q. Who is Besheltie?

23 A. Besheltie Smith.

24 Q. And how do you know Besheltie Smith?

25 A. Grew up -- like grew up together.

E859chr5

Gardner - direct

1 Q. Does Besheltie Smith have any children?

2 A. Yes.

3 Q. Do you know her children?

4 A. I know her son.

5 Q. What's her son's name?

6 A. Quay Quay -- no, it's Little.

7 Q. Is it Quay Quay or is it Little, just to be clear?

8 A. Little.

9 Q. Is Little his real name or his nickname?

10 A. I don't know his real name.

11 Q. So you know him by his nickname Little?

12 A. Yes.

13 Q. Did you see anybody else at the hospital besides Besheltie?

14 A. I seen Mike Boone. I seen Terrence in the wheelchair. And  
15 the other kid I don't really know. I think his name is  
16 Tyrrell.

17 Q. Let me ask you about Terrence. What, if anything, did you  
18 notice about Terrence. You said he was sitting in a  
19 wheelchair, correct?

20 A. Yes.

21 Q. When else did you notice?

22 A. His foot was bleeding.

23 Q. Excuse me?

24 A. His foot was bleeding. His leg or his foot.

25 MR. BAUER: Your Honor, may I approach?

E859chr5

Gardner - direct

1 THE COURT: You may.

2 BY MR. BAUER:

3 Q. Ms. Gardner, I'm showing you what's has been marked as  
4 Government Exhibit 221, 215 and 216. These are photographs.  
5 Could you take a look at these three tell me if you recognize  
6 the individuals in these photos.

7 A. (No response).

8 Q. Starting first with Government Exhibit 215. Do you  
9 recognize that person?

10 A. Yes.

11 Q. Who is that?

12 A. This is Terrence.

13 Q. That's Terrence?

14 A. Yes.

15 Q. Do you know Terrence's last name?

16 A. I think it's Stubs. I'm not sure.

17 Q. You're not sure?

18 A. No.

19 Q. Okay.

20 MR. BAUER: Your Honor, the government offers  
21 Government Exhibit 215 into evidence.

22 MR. BUCHWALD: No objection.

23 THE COURT: 215 will be received.

24 (Government's Exhibit 215 received in evidence)

25 MR. BAUER: May we publish it to the jury?

E859chr5

Gardner - direct

1 THE COURT: Sure.

2 Is the jury able to see that on the screens?

3 So one of the screens is not working. We'll take care  
4 of that.

5 JUROR: Now we can.

6 THE COURT: You just have to kick it once or twice.  
7 Okay.

8 BY MR. BAUER:

9 Q. Ms. Gardner, now moving to Government Exhibit 216. Do you  
10 recognize that individual?

11 A. Yes.

12 Q. Who is that?

13 A. This is Little.

14 Q. Little. Is that the person that you identified as  
15 Besheltie's son?

16 A. Yes.

17 MR. BAUER: The government offers Government Exhibit  
18 216 into evidence.

19 THE COURT: Any objection.

20 216 will be received.

21 (Government's Exhibit 216 received in evidence)

22 MR. BAUER: Permission to publish, your Honor?

23 THE COURT: You may.

24 BY MR. BAUER:

25 Q. Finally Government Exhibit 221. Do you recognize that



E859chr5

Gardner - direct

1 individual?

2 A. Yes.

3 Q. Who is that?

4 A. This is Joker.

5 Q. Joker. The individual you referred to as Jeffrey Henry as  
6 well?

7 A. Yes.

8 MR. BAUER: The government offers Government Exhibit  
9 221 into evidence.

10 THE COURT: Any objection?

11 221 will be received.

12 (Government's Exhibit 221 received in evidence)

13 MR. BAUER: Can we publish it, your Honor?

14 THE COURT: You may.

15 MR. BAUER: Thank you.

16 BY MR. BAUER:

17 Q. Just to be clear, Ms. Gardner, how do you know Joker?

18 A. Grew up around.

19 THE COURT: I'm sorry. I didn't hear you.

20 THE WITNESS: Grew up together. Close friends.

21 MR. BAUER: Your Honor, no further questions.

22 THE COURT: Okay. Any cross-examination?

23 MR. BUCHWALD: Yes, your Honor.

24 CROSS-EXAMINATION

25 BY MR. BUCHWALD:

E859chr5

Gardner - cross

1 Q. Good afternoon, Ms. Gardner.

2 Clear from the 911 call this was a very upsetting  
3 experience; is that right?

4 A. Yes.

5 Q. Now, when you got to -- let me show you what has been  
6 marked as -- premarked as Exhibit 3505-6 for identification and  
7 ask you if you'd read that to yourself.

8 MR. BAUER: Objection to form here.

9 THE COURT: I'm sorry.

10 MR. BAUER: Objection to form here.

11 THE COURT: There has been no question.

12 MR. BUCHWALD: I'm going to ask her if she's able to  
13 identify it after she reads it to herself.

14 THE COURT: Okay.

15 BY MR. BUCHWALD:

16 Q. Does that refresh your recollection as to anyone else that  
17 you saw at the hospital that evening when you went to the --  
18 when you went to the hospital?

19 A. No.

20 Q. It doesn't?

21 Was there a point in time -- withdrawn.

22 Today is August 5. Was there a point in time four  
23 days ago on August 1 when you sent a text message to one of the  
24 U.S. attorney's investigators?

25 A. Yes.

E859chr5

Gardner - cross

1 Q. Concerning who you had seen?

2 A. Yes.

3 Q. Right. And in that text message did you say that you had  
4 not seen somebody by the name of Quay Quay?

5 A. Yes.

6 Q. And why was it that you were sending a message saying you  
7 hadn't seen Quay Quay?

8 Had somebody suggested to you that Quay Quay was  
9 there?

10 A. No.

11 Q. Well how is it that you were sending a text message saying  
12 you had not seen Quay Quay if nobody had asked you about it?

13 A. Oh, I was asked who all did I see. At the hospital.

14 Q. All right. But how did you know to send a text saying I  
15 didn't see Quay Quay?

16 A. I sent the text because my phone is broke. That's why I  
17 sent the text.

18 Q. No. I understand that. But how did you know in the text  
19 to say I didn't see Quay Quay if no one had suggested to you or  
20 asked you about whether you had seen Quay Quay?

21 A. I named who I seen at the hospital. And then that's when I  
22 texted them and told them it wasn't Quay Quay, it was Mike  
23 Boone I seen.

24 Q. I understand you sent a text saying it wasn't Quay Quay.  
25 But that at least suggests that somebody asked you did you

E859chr5

Gardner - cross

1 see --

2 A. Asked me who all was at the hospital that night when I got  
3 up here.

4 Q. Say it again.

5 A. I was asked who all was at the hospital when I got up here.

6 Q. Who asked you that?

7 A. A city detective asked me first.

8 Q. Did somebody recently ask you that?

9 A. No.

10 Q. So when you sent this text and you said you didn't see  
11 Quay Quay --

12 A. What was the date from that?

13 Q. This is --

14 MR. BUCHWALD: If I may?

15 THE COURT: Show her the document. See if it  
16 refreshes her recollection.

17 BY MR. BUCHWALD:

18 Q. Four days ago when you sent -- did you send this text four  
19 days ago.

20 A. Yes, I did.

21 Q. So that's the date. And my question to you is had someone  
22 suggested to you, asked you do you see Quay Quay?

23 A. No.

24 Q. So no one asked you that?

25 A. No.

E859chr5

Gardner - cross

1 Q. You were just sending a text out of the blue saying I did  
2 not see Quay Quay?

3 A. This was when I had to meet the -- Mr. Patrol at the city  
4 police station before they gave me the date to come here for  
5 trial.

6 Q. But this is just four days ago, right?

7 A. Yes.

8 Q. So four days ago did somebody suggest to you that you had  
9 seen Quay Quay and you were saying no, I didn't?

10 A. No.

11 Q. So you were just out of the blue saying I did not see  
12 Quay Quay?

13 MR. BAUER: Objection, your Honor. Asked and  
14 answered, your Honor.

15 THE COURT: Asked and answered. Yes. Sustained.

16 BY MR. BUCHWALD:

17 Q. But you did see -- withdrawn.

18 You saw somebody by the name of Mike Boone?

19 A. Yes.

20 Q. Is Mike Boone related to Akinto Boone?

21 A. Yes.

22 Q. What is the relationship?

23 A. His brother.

24 Q. And did you see Mike Boone at the hospital?

25 A. Yes.

E859chr5

Gardner - cross

1 Q. And did you see Akinto Boone at the hospital?

2 A. No.

3 Q. Do you know who Quay Quay is?

4 A. Yes.

5 Q. Who is Quay Quay?

6 A. His mother name is Lonna. I know his family very well.

7 Q. Quay Quay, he lives in Newburgh?

8 A. Yes.

9 Q. And Quay Quay is the nickname?

10 A. I guess so, yes. I don't know his real name.

11 Q. And could we have --

12 MR. BUCHWALD: I'm going to play -- this is not in  
13 evidence yet. If I can have it marked as Defendant Thomas' Q  
14 for Quay Quay -- Q for identification.

15 MR. BAUER: Your Honor, objection.

16 THE COURT: Let's see what the exhibit is.

17 MR. BUCHWALD: I'm going to ask that it be played just  
18 for you at this point because it's not in evidence yet, just to  
19 see if you can identify it. Is there a way so that it's only  
20 on the witness's screen at this point?

21 THE COURT: What is it that you're going to show her?  
22 Is it a picture?

23 MR. BUCHWALD: I want to show it to her and see if it  
24 refreshes her recollection as to who she saw that night at the  
25 hospital.

E859chr5

Gardner - cross

1 Are you watching that?

2 THE COURT: Are you able to see something on the  
3 screen in front of you, Ms. Gardner?

4 THE WITNESS: No.

5 MR. BAUER: Your Honor, objection. Lack of  
6 foundation.

7 MR. BUCHWALD: Well I guess we need a button so she  
8 can see it.

9 THE COURT: Well, let's meet at sidebar.

10 (Continued on next page)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E859chr5

Gardner - cross

1 (At the sidebar)

2 THE COURT: Let me ask a question. Did you expect her  
3 to be done today?

4 MR. BAUER: Yes. We didn't expect any  
5 cross-examination.

6 THE COURT: Does she need to come back? How much more  
7 do you have?

8 MR. BUCHWALD: I think also Mr. Greenfield --

9 MR. GREENFIELD: I have cross also.

10 THE COURT: She may need to come back. And if she may  
11 need to come back, I'd rather send the jury home now because --  
12 then we can take care of these issues.

13 MR. BAUER: How long do you have?

14 MR. BUCHWALD: He has some time.

15 MR. BAUER: She has young kids. It's difficult for  
16 childcare.

17 THE COURT: If we can be done at 5:30, then I'll --

18 MR. BUCHWALD: Can we be done by 5:30?

19 MR. GREENFIELD: I can't say I would.

20 MR. BUCHWALD: Can we go off the record for a second?

21 THE COURT: Off the record.

22 (Discussion off the record)

23 THE COURT: So what is the objection to what  
24 Mr. Buchwald is doing?

25 MR. BAUER: He hasn't established that she doesn't



E859chr5

Gardner - cross

1 remember. He is asking questions about text messaging.

2 You were asking about a text message. What had  
3 happened. She met with us, mentioned that Quay Quay was there.  
4 And then later she was thinking about it, sent a text message  
5 you know what, I thought about it some more, I don't think I  
6 saw --

7 MR. GREENFIELD: She went home and wracked her brain.

8 MR. BAUER: I don't think you've laid the foundation.

9 MR. BUCHWALD: I mean the ultimate point is we just  
10 want to show Quay Quay is there. I'm not out to --

11 MR. BAUER: That Quay Quay was there. We can  
12 stipulate to it. Perfect. Let's save her a trip back. Let's  
13 stipulate. Quay Quay was there.

14 MR. BUCHWALD: He's going to have cross no matter what  
15 so it's not going to save a trip back.

16 THE COURT: Did she say anything about Mr. Christian?

17 MR. GREENFIELD: No. But there are certain things  
18 about the investigation I want to elicit that she was involved  
19 in.

20 THE COURT: Beyond being a witness and being at the  
21 hospital how was she involved in the investigation?

22 MR. GREENFIELD: Statements that she made to the  
23 police.

24 MR. BUCHWALD: She also was interfacing with Akinto  
25 Boone who was at the scene that night. She was arrested with

E859chr5

Gardner - cross

1 him. Did I hear that correctly on direct?

2 MR. BAUER: A few months ago, yes.

3 THE COURT: I'm going to send the jury home.

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E859chr5

Gardner - cross

1 (In open court)

2 THE COURT: Ladies and gentlemen, I've already broken  
3 one of my promises to you. I told you that we'd be done by  
4 5:00. It was the hope that we would be able to finish with  
5 this witness. However, that's not going to happen. So we're  
6 going to excuse you for the evening. We're going to ask that  
7 you be back first thing tomorrow morning, no later than 9:25 in  
8 the jury room. I know that you may need to spend some  
9 additional time in the back with Ms. Miller if you have some  
10 questions. This will not happen again. We will work from 9:30  
11 until 5:00. Okay. Until then, please do not discuss the case.  
12 And that includes on social media. Have a very pleasant  
13 evening and we'll see you bright and early tomorrow morning no  
14 later than 9:25 in the jury room.

15 Thank you. All rise.

16 (Jury excused)

17 (Continued on next page)

18  
19  
20  
21  
22  
23  
24  
25

E859chr5

Gardner - cross

1 (In open court)

2 THE COURT: Ms. Gardner, you may step down. But you  
3 will be required to come back tomorrow.

4 (Witness excused)

5 MR. BAUER: Your Honor, while Ms. Gardner is here,  
6 obviously when a witness is on cross-examination we don't speak  
7 with them. We do need to coordinate transportation for her.

8 THE COURT: That conversation can take place. Any  
9 nonsubstantive conversation can take place concerning  
10 logistics, the weather, the YES Network, etc.

11 MR. BAUER: Thank you, your Honor.

12 THE COURT: And I guess technologically will we be  
13 able to do what Mr. Buchwald expected us to be able to do which  
14 is to play that video or whatever it is on that monitor and not  
15 for the jury?

16 MR. NAWADAY: Yes, your Honor, we can do that.

17 THE COURT: Okay. Very well. Is there anything else  
18 that we need to do this evening that you need me for.

19 MR. BUCHWALD: Tomorrow morning are we going to be  
20 reconfigured?

21 This was mostly for jury selection. So are we going  
22 to be somewhat reconfigured tomorrow so that the teams are  
23 actually together?

24 I think we can just do that on our own.

25 THE COURT: If you want me to come down and move

E859chr5

Gardner - cross

1 tables, I'm happy to come down and move tables.

2 Very well. Just make sure that that happens before  
3 9:30.

4 (Adjourned to August 6, 2014 at 9:00 a.m.)  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

ELENA MARIA GARDNER	
---------------------	--

Direct By Mr. Bauer . . . . .	.73
-------------------------------	-----

Cross By Mr. Buchwald . . . . .	.87
---------------------------------	-----

## GOVERNMENT EXHIBITS

Exhibit No.	Received
-------------	----------

282 . . . . .	.81
---------------	-----

215 . . . . .	.85
---------------	-----

216 . . . . .	.86
---------------	-----

221 . . . . .	.87
---------------	-----